

IN THE MATTER OF MERCHANT MARINER'S DOCUMENT NO. Z-771432-D4 AND  
ALL OTHER SEAMAN'S DOCUMENTS

Issued to: Lindsay COATES

DECISION OF THE COMMANDANT  
UNITED STATES COAST GUARD

1795

Lindsay COATES

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.30-1.

By order dated 2 December 1969, an Examiner of the United States Coast Guard at Philadelphia, Pennsylvania, suspended Appellant's seaman's documents for one year upon finding him guilty of misconduct. The specifications found proved allege that while serving as a wiper on board SS HOPE, at Colombo, Ceylon, under authority of the document above captioned, Appellant:

- 1) on 4 August 1968, failed to stand a 1600-2000 watch;
- 2) on 9 October 1968, was absent from duties from 1600-2400;
- 3) on 10 October 1968, wrongfully left his duty station during the 1600-2400 watch and was "found lying in [his] bunk at approximately 1815 hours, this being the second offense of this nature";
- 4) on 27 November 1968, wrongfully left his duty station at 1030 and remained absent for the rest of the day; and
- 5) on 2 January 1969 failed to report for duty on time and, after being admonished for tardiness, left the duty station and failed to turn to;

and, while so serving when the vessel was at sea:

- 6) on 17 March 1969, failed to perform his assigned duties;
- 7) on 19 March 1969, failed to perform duties because of intoxication; and
- 8) on 20 March 1969, failed to perform duties because of intoxication.

At the hearing, Appellant was represented by non-professional counsel. Appellant entered a plea of not guilty to the charge and each specification.

The Investigating Officer introduced in evidence voyage records of HOPE.

In defense, Appellant offered in evidence his own testimony. At Appellant's request his medical records aboard HOPE were entered into evidence.

At the end of the hearing, the Examiner rendered a written decision in which he concluded that the charge and specifications had been proved. The Examiner then entered an order suspending all documents issued to Appellant for a period of one year.

The entire decision was served on 15 January 1970. Appeal was timely filed on 19 January 1970. Although Appellant had two more months to add to his original notice, he has not done so.

#### FINDINGS OF FACT

On all dates in question, Appellant was serving as a wiper on board SS HOPE and acting under authority of his document. Appellant acted, or failed to act, on each date in question, as set out in the specifications found proved.

#### BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. It is urged that the order is too severe.

APPEARANCE: Appellant, pro se.

#### OPINION

##### I

In determining whether the Examiner's order is too severe both the numerous offenses in the instant case and Appellant's prior record must be considered.

Appellant's record is as follows:

- 1) 27 February 1961, New York, admonished for failure to join AMERICAN REPORTER;
- 2) 27 November 1961, admonished for failure to perform aboard FLYING ENDEAVOR;

- 3) 19 July 1962, New York, suspended three months on twelve months' probation for five unauthorized absences and one instance of sleeping on watch on AFRICAN RAINBOW;
- 4) 29 October 1963, New York, suspended for four months, plus 3 months on 15 months' probation, for failure to join PIONEER MING;
- 5) 12 August 1966, New York, warned for two failures to perform aboard AMERICAN SCOUT;
- 6) 11 May 1967, Philadelphia, suspended for two months for failure to perform and unauthorized absence, AMERICAN PILOT;
- 7) 11 July 1967, New York, suspended for two months plus 4 months on 24 months' probation for five failures to perform and three incidents of disobedience of order on MORMAC LAND; and
- 8) 7 February 1968, New York, warned for four failures to perform aboard AFRICAN DAWN.

It is noted that through some chance the warning at New York on 7 February 1968 was given at a time when Appellant was on probation. In the instant case, the Examiner correctly noted that all the misconduct found also occurred within the probation period set on 11 July 1967.

Although the Examiner does not expressly say so, it may be assumed that he has effectuated the four month suspension from the 11 July 1967 order. The actual order in the instant case is therefore for a suspension of only eight months.

With such a record over a period of nine years, Appellant is fortunate that the Examiner did not order revocation, and cannot complain that the current order is too severe.

## II

A comment on the third specification found proved seems appropriate.

It is not misconduct to be found lying in a bunk intoxicated. The fact of being found lying on a bunk intoxicated at a certain time may be evidence to support a finding that a failure to perform duties was because of intoxication, but this is a fact to be proved, not a matter to be pleaded.

It is also inappropriate to allege, "This being the second

offense of this nature." If there was an earlier such offense it should have been charged, and, after proof, it would be apparent that there was a second offense even without an allegation to that effect. If there was insufficient evidence to prove a separate specification covering an earlier offense, the matter should not have been mentioned at all in the specification preferred.

On the record as a whole the deficiencies in this specification need not be corrected since it still spells out an offense, one among eight.

ORDER

The order of the Examiner dated at Philadelphia, Pennsylvania, on 2 December 1969, is AFFIRMED.

T. R. Sargent  
Vice Admiral United States Coast Guard  
Acting Commandant

Signed at Washington, D.C., this 2nd day of July 1970.

## INDEX

Order of Examiner  
    Lenient  
    Not excessive

Misconduct  
    Intoxication, neglect of duty